

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA D. LAMBERT,

Plaintiff,

V.

ROBERT S. MCKAY et al.,

Defendant.

Case No. C19-1829-BJR-SKV

ORDER GRANTING DEFENDANT'S
MOTION TO AMEND THE CASE
SCHEDULING ORDER

Plaintiff, Joshua D. Lambert, proceeds pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the Court is Defendant Island County's motion to amend the case scheduling order. Dkt. 75. Plaintiff opposes the motion. Dkt. 80. Defendant has filed a reply. Dkt. 81.

Defendant's motion seeks to extend the deadline to file dispositive motions from November 1, 2021, to January 1, 2022. Dkts. 75, 76. Defense counsel indicates that on October 4, 2021, he received Plaintiff's responses to Defendant's First Interrogatories and Requests for Production. *Id.* Defense counsel asserts that several of Plaintiff's responses were incomplete or contained unfounded objections. *Id.* Defense counsel indicates that, at the time he filed the instant motion, he had left several messages with Plaintiff's Department of Corrections counselor

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1 at Washington State Penitentiary but had not yet received a call back from Plaintiff. *Id.* Defense
 2 counsel indicates that because Plaintiff had not responded to his calls when he filed the instant
 3 motion, he had not yet been able to meet and confer with Plaintiff regarding these issues. *Id.*
 4 Defense counsel indicates that “once a conference can be arranged under Fed. R. Civ. P.
 5 37(a)(1)” Defendant intends to file a motion to compel. *Id.* Due to these outstanding discovery
 6 issues, Defense counsel indicates that Defendant has been unable to obtain the information
 7 necessary to file its summary judgment motion by the November 1, 2021, deadline. *Id.*

8 Plaintiff opposes Defendant’s motion. Dkt. 80. Plaintiff cites “Rule 56(f)” in support of
 9 his opposition and argues that Defendant has not shown it needs the discovery it seeks in order to
 10 support its summary judgment motion. *Id.* However, Fed. R. Civ. P. 56(f)¹ is not applicable
 11 here. Furthermore, to the extent Plaintiff intends to rely on Fed. R. Civ. P. 56(d), that provision
 12 is likewise not applicable. Fed. R. Civ. P. 56(d) provides that where a motion for summary
 13 judgment is pending and the non-movant can show by affidavit or declaration that it is unable to
 14 present facts essential to justify its opposition to the motion, the Court may: defer consideration
 15 or deny the motion; allow time to obtain affidavits or declarations or take discovery; or issue any
 16 other appropriate order. Here, neither party has filed a summary judgment motion that is
 17 currently pending. Rather, Defendant seeks to modify the case schedule on the grounds that
 18 there are outstanding discovery-related issues which need to be resolved prior to the filing of
 19 dispositive motions. Dkt. 75. Pursuant to Fed. R. Civ. P. 16(b) and Local Civil Rule (LCR)
 20 16(b), the case schedule may be modified for good cause and with the Judge’s consent. As there

21
 22 ¹ Fed. R. Civ P. 56(f) provides:
 23 **Judgment Independent of Motion.** After giving notice and a reasonable time to respond, the court may:
 (1) grant summary judgment for a nonmovant;
 (2) grant the motion on grounds not raised by a party; or
 (3) consider summary judgment on its own after identifying for the parties material facts that may not be
 genuinely in dispute.

1 appear to be outstanding discovery issues remaining in the case at this time², and it appears
 2 Defendant has been diligent in attempting to resolve those issues, the Court finds that Defendant
 3 has shown good cause for an extension of the dispositive motion deadline.³

4 The Court also notes that in the conclusion section of Defendant's motion, Defendant
 5 asks the Court to issue an order requiring the Plaintiff to "fully and fairly answer Defendant's
 6 discovery within ten days, and to award Defendant its costs and reasonable attorney's fees
 7 incurred in the bringing of this motion pursuant to Fed. R. Civ. P. 37(a)(5)(A)." Dkt. 75.
 8 However, this is not the relief requested in the body of Defendant's motion which only seeks an
 9 extension of the dispositive motion deadline. *Id.* In fact, Defendant appears to concede that at
 10 the time the instant motion was filed, it had not yet fully satisfied the "meet and confer"
 11 prerequisite for filing a motion to compel under Fed. R. Civ. P. 37(a).⁴ *See* Dkt. 75, at 4
 12 (Indicating Defendant intends to file a motion to compel "once a conference can be arranged
 13 under Fed. R. Civ. P. 37(a)(1)"). Furthermore, Defendant subsequently filed a separate motion
 14

15 ² The Court notes that it takes no position on the merits of the discovery issue itself at this time.

16 ³ The Court notes that Defendant has now filed a motion to compel which is noted for the Court's
 17 consideration on November 5, 2021. Dkt. 78.

18 ⁴ Fed. R. Civ. P. 37(a) provides, in relevant part:

19 On notice to other parties and all affected persons, a party may move for an order
 20 compelling disclosure or discovery. The motion must include a certification that the
 21 movant has in good faith conferred or attempted to confer with the person or party failing
 22 to make disclosure or discovery in an effort to obtain it without court action.

23 Similarly, Local Civil Rule (LCR) 37 provides, in relevant part:

24 Any motion for an order compelling disclosure or discovery must include a certification,
 25 in the motion or in a declaration or affidavit, that the movant has in good faith conferred
 26 or attempted to confer with the person or party failing to make disclosure or discovery in
 27 an effort to resolve the dispute without court action. The certification must list the date,
 28 manner, and participants to the conference. If the movant fails to include such a
 29 certification, the court may deny the motion without addressing the merits of the dispute.
 30 A good faith effort to confer with a party or person not making a disclosure or discovery
 31 requires a face-to-face meeting or a telephone conference.

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to compel which seeks this same relief. Dkt. 78. Accordingly, to the extent Defendant seeks to compel discovery responses in the instant motion, Dkt. 75, the request is DENIED as premature. The Court will consider Defendant's request to compel in the context of Defendant's subsequently filed motion to compel.

Accordingly, it is hereby ORDERED:

(1) Defendant's request to amend the scheduling order, Dkt. 75, is GRANTED. The

dispositive motion deadline is extended to **January 3, 2022**.⁵

(2) To the extent Defendant seeks to compel discovery responses in the instant motion,

Dkt. 75, the request is DENIED as premature. The Court will consider Defendant's request to compel in the context of Defendant's subsequently filed motion to compel.

(3) The Clerk is directed to send copies of this order to the parties and to the Honorable Barbara J. Rothstein.

Dated this 2nd day of November, 2021

S. Kate Vaughan
S. KATE VAUGHAN
United States Magistrate Judge

⁵ The Court notes that Defendant requested an extension to January 1, 2022. Dkt. 75. However, because January 1, 2022, is a holiday, the Court will extend the deadline to January 3, 2022.